

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

) Case No.:
)
JOSHUA SCHLEIFER, on behalf of himself)
and all other similarly situated consumers,)
)
Plaintiff,)
vs.)
)
AVIS RENT A CAR SYSTEM, LLC. and)
AVIS BUDGET GROUP,)
)
Defendants.)

CLASS ACTION COMPLAINT

Plaintiff, Josh Schleifer (“Joshua”) by and through undersigned counsel, pleading on his own behalf and on behalf of all others similarly situated, brings this Complaint against Defendants, Avis Rent A Car System LLC. and Avis Budget Group (hereinafter collectively referred to as “Defendants or Avis”), and states as follows:

PRELIMINARY STATEMENT

1. Josh brings this putative class action seeking penalties for violation of the Truth-in-Consumer Contract, Warranty and Notice Act (TCCWNA or Act), *N.J.S.A. 56:12-14 to -18*. The Act was codified in 1981 and designed to address the inclusion of provisions in consumer contracts, warranties, notices, and signs that violate consumer rights. *Shelton v. Restaurant.com, Inc.*, 214 N.J. 419, 431 (2013). The Act was specifically designed to prevent a defendant from absolving itself of liability and limiting the rights of consumers in seeking redress for damages incurred.

2. Contracts, warranties, notices, and signs that violate the TCCWNA, subject the violator to a penalty not less than \$100, and allow for the consumer to petition a court to terminate said contract. *N.J.S.A. 56:12-17.*

JURSIDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d) because members of the proposed Class are citizens of states different from the Defendants home state, there are more than 100 Class Members, and the amount in-controversy exceeds \$5,000,000, exclusive of interest and costs

4. This Court has jurisdiction over the Defendants because Defendants corporate headquarters are located in Parsippany, New Jersey, and it operates and controls its website from Parsippany, New Jersey.

5. Venue is proper in this District under 28 U.S.C. 1391(b) because Defendants improper conduct alleged in this complaint occurred in, was directed from, and/or emanated from this judicial district and/or because the Defendants are subject to personal jurisdiction in this district.

PARTIES

6. Josh is a natural person, who at all relevant times has resided New York, New York.

7. Avis Budget Group is a corporation with corporate headquarters in Parsippany, New Jersey. Avis Budge Group is the parent company of Avis Rent A Car System LLC.

8. Avis Rent A Car System LLC is a corporation with corporate headquarters in Parsippany, New Jersey.

ALLEGATIONS APPLICABLE TO ALL COUNTS

9. Plaintiff repeats, realleges, and reasserts the allegations contained in paragraphs 1 through 8 above and incorporates them as if specifically set forth at length herein.
10. Avis owns and operates a car rental company.
11. Consumers frequently rent vehicles through a website owned and operated by Avis: avis.com.
12. On or about August 2015, Plaintiff rented a vehical through Avis.com.
13. Joshua is a“consumer” within the meaning of N.J.S.A. 56:12-15 in that he rented a car from Avis which is primarily for personal, family, and household services.
14. Defendants are “sellers” within the meaning of N.J.S.A. 56:12-15.
15. Defendants website provides a terms and conditions section. Exhibit A.
16. Within these terms and conditions, Defendants intentionally attempt to absolve themselves of all possible liability, blatantly obscure the effects of their disclaimers on New Jersey residents, and shirk away from duties they owe to consumers.
17. All of these actions violate the TCCWNA.
18. In the general terms and conditions segment, Defendants’ website states:

ALL CONTENT ON THIS WEB SITE IS PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. OTHER THAN THOSE WARRANTIES WHICH, UNDER THE U.S. LAWS APPLICABLE TO THESE TERMS, ARE IMPLIED BY LAW AND ARE INCAPABLE OF EXCLUSION, RESTRICTION, OR MODIFICATION, AVIS DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER AVIS, ITS AFFILIATED OR RELATED ENTITIES, NOR THE PROVIDERS, NOR ANY PERSON INVOLVED IN THE CREATION, PRODUCTION, AND DISTRIBUTION OF THIS WEB SITE WARRANT THAT THE FUNCTIONS CONTAINED IN THIS WEB SITE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SERVER THAT MAKES THE CONTENT AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL

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YOU EXPRESSLY AGREE THAT USE OF THIS WEB SITE IS AT YOUR SOLE RISK. YOU (AND NOT AVIS) ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION OF YOUR SYSTEM. YOU EXPRESSLY AGREE THAT NEITHER AVIS, NOR ITS AFFILIATED OR RELATED ENTITIES (INCLUDING ITS PROVIDERS), NOR ANY OF THEIR RESPECTIVE EMPLOYEES, OR AGENTS, NOR ANY PERSON OR ENTITY INVOLVED IN THE CREATION, PRODUCTION AND DISTRIBUTION OF THIS WEB SITE, IS RESPONSIBLE OR LIABLE TO ANY PERSON OR ENTITY WHATSOEVER FOR ANY LOSS, DAMAGE (WHETHER ACTUAL, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURY, CLAIM, LIABILITY OR OTHER CAUSE OF ANY KIND OR CHARACTER WHATSOEVER BASED UPON OR RESULTING FROM THE USE OR ATTEMPTED USE OF THIS WEB SITE OR ANY OTHER LINKED SITE. BY WAY OF EXAMPLE, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AVIS AND RELATED PERSONS AND ENTITIES SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY CLAIM OR DAMAGE ARISING FROM FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION, COMPUTER VIRUS, THEFT, DESTRUCTION, UNAUTHORIZED ACCESS TO OR ALTERATION OF PERSONAL RECORDS, OR THE RELIANCE UPON OR USE OF DATA, INFORMATION, OPINIONS OR OTHER MATERIALS APPEARING ON THIS WEB SITE. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT AVIS IS NOT LIABLE OR RESPONSIBLE FOR ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER SUBSCRIBERS OR THIRD PARTIES.

SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. IN SUCH JURISDICTIONS, AVIS' LIABILITY IS LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

19. This clause violates specific provisions of the TCCWNA.

Terms and Conditions Which Purport to Deny Consumers' Rights to Damages, and Absolve Defendant of All Liability Violate the TCCWNA

20. Defendants Terms and Conditions attempt to absolve themselves of all liability, and completely remove the duties it owes to consumers.
21. New Jersey Courts have established that such exculpatory clauses that prevent a consumer's right to damages are not allowed. *Martinez-Santiago v. Public Storage*, 38 F.Supp.3d 500, 512-513 (DNJ 2014); *Marcinczyk v. State of New Jersey Police Training Comm'n*, 203 N.J. 586, 593 (2010).
22. Further, it is well established in New Jersey that a defendant owes a duty of care to consumers to avoid creating an unreasonable risk of harm.
23. By violating these clearly established rights of consumers, and attempting to limit established seller responsibility, Defendants have violated the TCCWNA.

Terms and Conditions Which Purport to Deny Rights, Responsibilities and Remedies Under the New Jersey Punitive Damages Act ("NJPDA")Violate the TCCWNA

24. Defendants Terms and Conditions attempt to prevent consumers from seeking punitive damage awards for damage incurred.
25. New Jersey has codified a clearly established right of its consumers to seek punitive damages in specific instances.

26. N.J. Stat. § 2A:15-5.12 states that a New Jersey plaintiff may seek punitive damages where a defendant's acts or omissions actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed

27. By violating these clearly established right of New Jersey consumers, and attempting to limit established seller responsibility, Defendants have violated the TCCWNA.

Terms and Conditions Which Purport to Deny Rights, Responsibilities and Remedies Under the Uniform Commercial Code ("U.C.C.") Violate the TCCWNA

28. Defendants Terms and Conditions attempt to prevent consumers from seeking redress in accordance with that provided under the New Jersey Uniform Commercial Code.

29. The NJ UCC provides consumers a number of remedies in the event a seller of goods has breached its duties.

30. By violating these clearly established right of New Jersey consumers, and attempting to limit established seller responsibility, Defendants have violated the TCCWNA.

Terms and Conditions Which Purport to Deny Rights, Responsibilities and Remedies to Consumers Damaged by Failure To Provide Internet Security and Notice Violate the TCCWNA

31. Defendants Terms and Conditions attempt to prevent consumers from seeking redress in accordance with that provided under the New Jersey internet protection laws.

32. New Jersey requires that business owners safeguard customers' personal information placed on the internet. N.J.S.A. 56:8-161, *et seq.* Failure to comply with the statutory mandates and take proper safeguards to protect against the dissemination of customers' personal information is a tortious offense and actionable under the New Jersey Consumer Fraud Act. N.J.S.A. 56:8-3; 56:8-3.1. Similarly, in the event of breach, notices must be sent out by the business owner. N.J.S.A. § 56:8-163.

33. By violating these clearly established right of New Jersey consumers, and attempting to limit established seller responsibility, Defendants have violated the TCCWNA.

Failure To Clarify Effect on New Jersey Consumers of Ambiguous Limitation of Liability Provision

34. Defendants Terms and Conditions state that certain states may not allow certain liability limitations without specifying which provisions are or are not void, unenforceable or inapplicable within the State of New Jersey.

35. Said action violates the TCWNA.

CLASS ACTION ALLEGATIONS

The Class

36. Joshua bring this class action on behalf of himself and all other similarly situated consumers pursuant to Rule 23 of the Federal Rules of Civil Procedure (“FRCP”) and seeks to represent the following class of people:

Class: All consumers whom were offered, given, displayed or entered into the Terms and Conditions on Defendants' avis.com website, during the applicable statute of limitations through the date of final judgment in this action.

37. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment.

38. Excluded from the Class are the Defendants herein, and any person, firm, trust, corporation or other entity related to or affiliated with Defendants, including, without limitation, persons who are officers, directors, employees, associates or partners of Defendants.

Numerosity

39. Upon information and belief, the class consists of thousands of consumers throughout the United States. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

40. The exact number and identities of the members of the Class are unknown at this time and can only be ascertained through discovery. Identification of the members of the Class is a matter capable of ministerial determination from Defendants' records.

Common Questions of Law and Fact

41. There are questions of law and fact common to the class that predominates over any questions affecting only individual Class members. These common questions of law and fact include, without limitation: (i) whether Defendants violated various provisions of the TCCWNA; (ii) whether the Plaintiff and the Class have been injured by the conduct of Defendants; (iii) whether the Plaintiff and the Class have sustained damages and are entitled to restitution as a result of Defendants wrongdoing and, if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and (iv) whether the Plaintiff and the Class are entitled to declaratory and/or injunctive relief.

Typicality

42. Plaintiff's claims are typical of the claims of the members of the Class, and the Plaintiff has no interests adverse or antagonistic to the interests of other members of the Class.

Protecting the Interests of the Class Members

43. Plaintiff will fairly and adequately represent the Class members' interests in that the Plaintiff's counsel is experienced and, further, anticipates no impediments in the pursuit and maintenance of the Class Action as sought herein.

Proceeding Via Class Action is Superior and Advisable

44. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted.

45. The members of the Class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a Class Action.

46. Prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties.

47. A Class Action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein.

48. Absent a Class Action, the members of the Class will continue to suffer losses borne from Defendants breaches of Class members' statutorily protected rights as well as monetary damages, thus allowing and enabling: (a) Defendants conduct to proceed and; (b) Defendants to further enjoy the benefit of its ill-gotten gains.

49. Defendants have acted, and will act, on grounds generally applicable to the entire Class, thereby making appropriate a final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

COUNT I
VIOLATION OF TRUTH IN CONSUMER CONTRACT, WARRANTY AND
NOTICE ACT N.J.S.A. 56:12-15

50. Plaintiff repeats, realleges and reasserts the allegations contained in paragraphs 1 through 35 above and incorporates them as if specifically set forth at length herein.

51. N.J.S.A. 56:12-15 states:

No seller, lessor, creditor, lender or bailee shall in the course of his business offer to any consumer or prospective consumer or enter into any written consumer contract or give or display any written consumer warranty, notice or sign after the effective date of this act which includes any provision that violates any clearly established legal right of a consumer or responsibility of a seller, lessor, creditor, lender or bailee as established by State or Federal law at the time the offer is made or the consumer contract is signed or the warranty, notice or sign is given or displayed.

52. Defendant's terms and conditions consist of a written consumer warranty, notice or sign, that violates numerous clearly established legal rights of New Jersey consumers and responsibilities owed by sellers to those consumer.

53. Plaintiffs have been damaged and are entitled to relief.

COUNT II
VIOLATION OF TRUTH IN CONSUMER CONTRACT, WARRANTY AND
NOTICE ACT N.J.S.A. 56:12-16

54. Plaintiff repeats, realleges and reasserts the allegations contained in paragraphs 1 through 35 above and incorporates them as if specifically set forth at length herein.

55. N.J.S.A. 56:12-16 states:

No consumer contract, warranty, notice or sign, as provided for in this act, shall contain any provision by which the consumer waives his rights under this act. Any such provision shall be null and void. No consumer contract, notice or sign shall state that any of its provisions is or may be void, unenforceable or inapplicable in some jurisdictions without specifying which provisions are or are not void, unenforceable or inapplicable within the State of New Jersey; provided, however, that this shall not apply to warranties.

56. Defendants terms and conditions state that certain liability provisions may be void and unenforceable or inapplicable in some jurisdictions, yet, Defendants terms and conditions do not specify which provisions are or are not void, unenforceable or inapplicable within the State of New Jersey.

57. Plaintiffs have been damaged and are entitled to relief.

PRAYER FOR RELIEF

WHEREFORE, Joshua, respectfully requests that this Court do the following for their benefit:

- a) Enter an Order certifying that this action may be maintained as a class action;
- b) Judgment awarding to the Plaintiff and Class Members not less than \$100 for each violation of the TCCWNA, pursuant to N.J.S.A. 56:12-17;
- c) Enter an Order terminating the above-referenced language in the provisions of the “Terms and Conditions” set forth on Defendants website, and ordering Defendants to remove said terms from its website;

- d) award costs and reasonable attorneys' fees, pursuant to N.J.S.A. 56:12-17; and
- e) Grant such other and further relief as may be just and proper.

JURY TRIAL DEMAND

Plaintiff demands a jury trial on all issues so triable.

Dated this 15th day of April, 2016

Respectfully Submitted,

_____/s/ Fred M. Zemel_____

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Exhibit A

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INDEMNIFICATION

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You agree that our sole obligation to you is to provide the Web Site as-is. You agree

that unless we do something that is grossly negligent or an act of willful misconduct in connection with the Web Site, we will not be liable to you or to any third party.

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DISPUTE RESOLUTION -- VENUE

You agree to be subject to the jurisdiction of New Jersey. You agree that any dispute between you and us to enforce these Terms, or in connection with any matters related to this Web Site, will be resolved in New Jersey to the exclusion of any other potential venue.

DISPUTE RESOLUTION - ARBITRATION, NO CLASS ACTIONS

You agree that you will only sue us as an individual. You agree that you will not file a class action against **Avis or its Providers**, or participate in a class action against **Avis or its Providers**. You and we agree that any dispute between you and **Avis or its Providers** arising under or related to these Terms or this Web Site can only be brought in binding individual (non-class) arbitration to be administered by the American Arbitration Association ("AAA"). If, for any reason, AAA is not available, you or we may file our case with any national arbitration company.

SEVERANCE OF INVALID TERMS

If any provision of these Terms shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions. Notwithstanding anything to the contrary, if the class action waiver of these Terms is deemed unenforceable, the agreement of the parties to engage in arbitration shall likewise be deemed stricken.

ENTIRE AGREEMENT

The provisions and conditions of these Terms, and each obligation referenced herein,

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RENT A CAR SYSTEM LLC.**